

No. 15349

United States
Court of Appeals
for the Ninth Circuit

JEFFERSON STANDARD LIFE INSURANCE
COMPANY, a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA, H. L.
BYRAM, County Tax Collector of Los Angeles
County, and GEORGE T. GOGGIN, Trustee
of Stockholders Publishing Company, Inc., a
Corporation, Bankrupt,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California,
Central Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Los Angeles 17, California.

For Appellee, George T. Goggin, Trustee:

CRAIG, WELLER & LAUGHARN;
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For Appellee, United States of America:

CHARLES K. RICE,
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LEE A. JACKSON,
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Assistant U. S. Attorney,
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Los Angeles 12, California.

In the United States District Court for the Southern District of California, Central Division

In Bankruptcy No. 64381-WB

In the Matter of:

STOCKHOLDERS PUBLISHING COMPANY,
INC.,

Bankrupt.

ORDER AUTHORIZING TRUSTEE TO SELL
REAL AND PERSONAL PROPERTY
FREE AND CLEAR OF LIENS

The verified petition of George T. Goggin, Trustee in Bankruptcy herein, for an Order of this Court authorizing said Trustee to sell the real and personal property of the bankrupt estate free and clear of liens, having come on for hearing before this Court on the 14th day of April, 1955, at the hour of 10:00 o'clock a.m., the Trustee being present by his associate, A. J. Bumb, and being represented by his counsel, Robert H. Shutan, and Craig, Weller & Laugharn, by Robert H. Shutan; respondent Jefferson Standard Life Insurance Company being represented by its counsel, Meserve, Mumper & Hughes, by Leo E. Anderson; the Director of Internal Revenue of the United States of America, being represented by his counsel, Eugene Harpole, Esq.; counsel for the Trustee advising the Court that he had a written communication from Stanley K. Brown of the firm of Brown, Hamill & Hunt,

Attorneys at Law of Pasadena, California, that said firm represented respondent, John W. Lytle Corporation, which communication stated that said respondent did not wish to contest the petition of the Trustee; [2*] and counsel for the Trustee advising the Court that he had received on April 13, 1955, a telephone communication from Andrew Porter of the office of the Los Angeles County Counsel, representing respondent, H. L. Byram, County Tax Collector, and that said respondent through his counsel stated that he had no objection to this Court making its Order authorizing the Trustee to sell the real and personal property of this bankrupt estate free and clear of the liens as prayed in said petition; and after hearing statements from all counsel present, now upon said petition of the Trustee, statements of counsel of the proceedings herein, and good cause appearing therefor, it is hereby

Ordered as follows:

1. That George T. Goggin, the Trustee herein, be and he hereby is authorized to sell free and clear of the trust deed, chattel mortgage, liens and encumbrances described in the Trustee's petition, the real and personal property of this bankrupt estate described in said petition, and

2. That the liens of the trust deed, chattel mortgage and other liens and encumbrances described in said petition be transferred to the pro-

*Page numbering appearing at foot of page of original Certified Transcript of Record.

ceeds of the sale of said real and personal property covered by said liens, and, subject to the conditions set forth in the following paragraph, said proceeds of sale being subject to the payment of costs to this estate of the preservation of said assets, the actual and direct costs and expenses of the sale of said assets, including, but not necessarily limited to, appraisers' fees, costs of notices, advertising expense, commissions, if any; auctioneers' fees and charges, if any, and also subject to what this Court shall determine to be the beneficial costs of administration; and

3. That the authorization granted herein to sell free and clear of liens is subject to the stipulation hereby imposed by this Court that no proposed sale of such real and personal [3] property of this estate by the Trustee will be confirmed by this Court unless the proceeds therefrom are at least equal in amount to the sum of the balance owing to Jefferson Standard Life Insurance Company upon the obligation owing to it, secured by said deed of trust and chattel mortgage and the amounts owing upon the liens on said property in favor of H. L. Byram, County Tax Collector, this provision being a measure of amount only and not in any way a ruling or determination as to the respective or relative rights of or among the various lienholders of this estate; this Order being without prejudice to any further proceedings, if any, in connection with a determination of the relative priorities of the various lien claimants.

Dated: April 27, 1955.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

Approved as to form pursuant to Rule 7a.

HAROLD W. KENNEDY,
County Council;

By /s/ ANDREW O. PORTER,
Attorneys for H. L. Byram,
County Tax Collector.

MESERVE, MUMPER &
HUGHES,

By
Attorneys for Jefferson Standard Life Insurance
Company.

EUGENE HARPOLE,
Civil Advisory Counsel,

By /s/ EUGENE HARPOLE,
Attorney for Director of
Internal Revenue.

/s/ BRUCE I. HOCHMAN,
Assistant U. S. Attorney.

[Endorsed]: Filed April 27, 1955, Referee. [4]

[Title of District Court and Cause.]

PETITION AND NOTICE THEREON

To the Honorable David B. Head, Referee in Bankruptcy:

The verified Petition of George T. Goggin respectfully alleges:

I.

That he is the duly elected, qualified and acting Trustee in the above-entitled bankruptcy proceedings.

II.

That heretofore and on April 27, 1955, the Referee made an Order authorizing the Trustee to sell the real and personal property assets of this bankrupt estate free and clear of liens. Thereafter and on April 29, 1955, an Order was made confirming the sale thereof to Samuel C. Rudolph, Trustee, for the amount of \$382,500. The sale's escrow has been opened at the Title Trust & Insurance Company and the trustee is proceeding to close the same and to conclude the sale.

III.

Your trustee alleges it is necessary there be a determination herein of the nature, extent, amount, validity, priority and right to participation in the said sale's proceeds [5] of the following liens upon the said assets so sold, to wit:

1. County of Los Angeles and/or H. L. Byram, County Tax Collector thereof, general and special county and city taxes for fiscal year 1954-55;

2. United States of America and/or Director of Internal Revenue, lien for \$235,566.10 with interest and penalties, assessment No. 19661, filed in the office of Collector of Internal Revenue, 6th District of California, on March 14, 1952, and notice of lien filed December 20, 1954, as No. 160559 in the office of the County Recorder of Los Angeles County;

3. Mortgage or Deed of Trust upon real property and chattel mortgage upon personal property, executed by bankrupt on December 1, 1945, recorded on same date to secure an original indebtedness of \$1,000,000, payable to Jefferson Standard Life Insurance Company;

4. Mechanic lien claim by John W. Lytle Corporation, an action filed to foreclose the same on March 23, 1955.

IV.

Your trustee requests a determination be had with respect to the legal rights upon behalf of the said lien claimants or any of them to receive payment of interest after December 31, 1954, the date of the filing of the within bankruptcy proceeding. Your trustee alleges it is also necessary a determination and allocation of the sale's proceeds of \$382,500 be had as to the portion attributable to the real property and as to the portion attributable to the personal property and in connection therewith your trustee requests that [6] the determination and allocation thereof be \$206,664.25 to real property and \$175,835.75 to personal property.

Wherefore, your trustee prays his Petition be heard by the Referee and that upon hearing all parties in interest an appropriate Order be made in the premises.

Dated: May 23, 1955.

/s/ GEORGE T. GOGGIN,
Trustee in Bankruptcy.

ROBERT H. SHUTAN, and
CRAIG, WELLER &
LAUGHARN,

By /s/ HUBERT F. LAUGHARN,
Attorneys for Trustee.

Notice

To County of Los Angeles, State of California,
and/or H. L. Byram, County Tax Collector;
Harold W. Kennedy, County Counsel. Attention:
Mr. Andrew O. Porter, Counsel;

To United States of America and/or Director of
Internal Revenue. Attention: Eugene Harpole,
Counsel;

To Jefferson Standard Life Insurance Company.
Attention: Meserve, Mumper & Hughes, and
Leo Anderson, Counsel;

To John W. Lytle Corporation. Attention: Brown,
Hamill & Hunt, and Stanley K. Brown, Counsel;

You Are Hereby Notified that the trustee has
filed his within Petition and the Referee has set

the same for hearing for determination in his court room, 340 Federal Building, Temple and Spring Streets, Los Angeles, California, on June 8, 1955, at the hour of 10 a.m. thereof.

Dated: May 23, 1955.

Duly verified.

[Endorsed]: Filed May 25, 1955, Referee. [7]

[Title of District Court and Cause.]

MEMORANDUM BY REFEREE AND ORDER
TRUSTEE v. VARIOUS LIENHOLDERS

Upon the trustee's Petition to Determine the Priority of Liens, several questions have been raised by the responding parties. In this memorandum I will attempt to settle only one matter.

The Director of Internal Revenue asks that the Jefferson Standard Life Insurance Company be required to proceed by foreclosure against certain property subject to its trust indenture and chattel mortgage which was transferred prior to bankruptcy by the bankrupt to the Times Mirror Company. This transfer was made subject to the "lien if any" of the chattel mortgage of Jefferson. The consideration given by the Times Mirror Company was \$275,000. There was no provision that the Times Mirror Company was to assume the chattel mortgage, nor has any evidence been offered that

the purchase price was reduced because of the chattel mortgage.

In the marshaling of liens we must apply the [9] equitable rule which requires the senior lienor to resort first to that part of his security against whom junior lienors have the least interest. Section 2899 of the California Civil Code states the rule. Without going into detail, may I state that my research and the study of cases cited to me, has not disclosed a case where a senior lienor has been required to pursue property into the hands of a transferee before he could realize on the security still in the hands of the mortgagor. Under certain circumstances he may do so, *Epperson v. Cappelino*, 113 C.A. 473, but he is not required to take this action as a prerequisite to proceeding against other security. The rule, in general, is limited to the proper apportionment between several funds in the hands of the obligor.

I conclude that there is no duty cast on Jefferson to pursue a lien against property transferred after its lien was created before it can realize on property in the possession of the bankrupt which later passed to the trustee.

Inasmuch as that property has been sold for more than the claim of Jefferson, and the claim of Jefferson has been transferred to the moneys received from the sale and no further impediment to distribution appears, I direct that the claim of Jefferson as to principal and interest until the date

of bankruptcy be paid forthwith when this order becomes final.

The matter of interest after bankruptcy is a question which I reserve for later decision.

Unless formal findings and conclusions are requested by a party in interest, this may be considered as a final order.

Dated this 15th day of August, 1955.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

[Endorsed]: Filed Aug. 15, 1955, Referee. [10]

[Title of District Court and Cause.]

SUPPLEMENTAL ORDER

The Referee having heretofore made his Memorandum and Order dated August 15, 1955, upon the Petition of George T. Goggin, trustee, to determine priorities of liens, and thereafter and on August 19, 1955, the Referee having received a written communication from Andrew O. Porter, Deputy County Counsel, representing H. L. Byram, County Tax Collector, requesting that a Supplemental Order be made requiring a withholding until further determination by the Referee of the amount of the tax lien claim of said H. L. Byram, County Tax Collector, in the amount of \$15,384.10 from the payment as authorized to the Jefferson Standard Life

Insurance Company as encumbrance holder until the rights of the said County Tax Collector and the said Jefferson Standard Life Insurance Company are determined by final Order in and to the said fund; and

The trustee having agreed with the Director of Internal Revenue that a Supplemental Order be made herein reserving to the Director of Internal Revenue any and all of the respective liens, claims and charges of the Director of Internal Revenue against and upon the assets sold by the bankrupt to the Times-Mirror Company on December 18, 1954, and/or upon any funds recovered by [11] the trustee in any subsequent proceedings herein from the said purchaser; likewise reserving to the said Director of Internal Revenue any and all of its claims to priority and/or liens upon the assets so sold or any recovery by the trustee in connection therewith as aforesaid;

Now, Therefore,

It Is Ordered that the two said reservations and positions be and the same hereby are approved in this Supplemental Order to the said Order of the Referee dated August 15, 1955.

There is also reserved to the Director of Internal Revenue any and all of its claims to priority and/or liens upon the said fund of \$15,384.10 which is being withheld from the payment to Jefferson Standard Life Insurance Company as set forth hereinabove.

Dated: August 29, 1955.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

The above Supplemental Order is hereby approved:

GEORGE T. GOGGIN,
Trustee;

By CRAIG, WELLER &
LAUGHARN;

By /s/ HURBERT F. LAUGHARN,
Attorneys for Trustee.

H. L. BYRAM,
County Tax Collector,

By /s/ ANDREW O. PORTER,
Deputy County Counsel.

R. A. RIDDELL,
Director of Internal Revenue;

By /s/ BRUCE I. HOCHMAN,
Assistant U. S. Attorney.

[Endorsed]: Filed Aug. 29, 1955, Referee. [12]

[Title of District Court and Cause.]

MEMORANDUM BY REFEREE

On April 27, 1955, an order was entered in this case authorizing the trustee to sell certain properties free and clear of the trust deed, chattel mort-

gage, liens and encumbrances described in the trustee's petition for said order. The order provided that the liens and encumbrances be transferred to the proceeds of the sale subject to the payment of certain costs to the bankrupt estate. This order was approved by all of the parties involved.

The properties were sold by the trustee at public auction; he made his return of sale showing that he received \$382,500.00 from the sale of the various parcels of real property and lots of personal property. On April 29, 1955, an order was made confirming the sale.

On May 25, 1955, the trustee filed a petition in which he asked for determination of the nature, extent, validity and priority of the various liens and encumbrances. Appearing in response to the petition were the Jefferson Standard Life [13] Insurance Company, the United States of America (Director of Internal Revenue), and the Los Angeles County Tax Collector. On July 12, 1955, a further order was made directing that the net proceeds of the sale be deposited with the Clerk of the Court and that the liens of the respondents be transferred to said fund. Other orders have been entered affecting the same subject matter, but I believe the petitions and orders outlined above sufficiently describe the proceedings leading up to the issues presented.

In its answer to the trustee's petition the United States of America demanded that the senior lienor,

Jefferson Standard Life Insurance Company, be required to proceed against certain properties, transferred by the bankrupt prior to bankruptcy, before it could assert a claim to the fund herein. After taking testimony on all matters, I determined this one issue adversely to the contention of the United States. Thereafter, the Jefferson Standard Life Insurance Company was paid its claim in full with interest to date of bankruptcy less \$15,384.10. This amount equals the claim of the County Tax Collector.

All other matters are presently in issue. I will outline, according to my understanding, the contentions of the parties and the facts upon which they are based.

The Jefferson Standard Life Insurance Company (hereafter referred to as Jefferson) acquired a lien against the real and personal property in question by a trust indenture, trust deed and chattel mortgage (Exhibit 2) which were recorded in Los Angeles County on December 1, 1945.

Los Angeles County assessed personal property taxes for the year 1954-55 against the bankrupt which became a lien on March 1, 1954, against the real property here in question in the amount of \$15,384.10. [14]

The Collector (now Director) of Internal Revenue, on March 14, 1952, received from the Commissioner of Internal Revenue an assessment list carrying an assessment against the bankrupt for

corporate income tax for the years 1943, 1944 and 1945 in the total amount, \$235,566.10. On December 20, 1954, the Director filed a Notice of Federal Tax Lien in the office of the County Recorder for Los Angeles County.

The principal question raised is the ranking of the priorities of the foregoing lien claimants. There is also the question of marshaling their liens between the proceeds from the sale of real property and personal property which may or may not become pertinent to a determination herein. And there is the question of post-bankruptcy interest on the claims.

In point of time the liens rank as follows: First, Jefferson; second, the United States; and third, the County of Los Angeles. The lien of the United States attached upon the receipt by the Collector of the assessment list on March 14, 1952, Sec. 3671, Internal Revenue Code of 1939. The lien of the United States is junior to the lien of Jefferson by reason of the provision of Section 3672, I.R.C., which excepts the lien of a mortgagee from the paramount lien of the United States. The lien of the County of Los Angeles is effective as of the date of March 1, 1954. This lien is junior to the lien of the United States because relative priorities are governed by the rule of "first in time, first in right." *United States v. City of New Britain, et al.*, 347 U.S. 81; *California State Department of Employment v. United States* (C.A. 9), 210 F. 2d 242. However, the lien of the County of Los Angeles, by

California law, is superior to the lien of Jefferson. *Dougherty v. Henarie*, 47 C. 9; *Courtney v. Byram*, 54 C.A. 2d 769. I quote from the opinion in the later case: [15]

“By statutory provision, as indeed by the harsh law of necessity, taxes have been made a first lien upon property. They are a primary obligation of the citizen, and the flow of this ‘life blood of government’ may not be interrupted. Generally, therefore, the obligation to pay taxes is superior to the obligation of private debts.”

This court is faced with the anomalous situation where Jefferson’s mortgage lien has priority over the tax lien of the United States, and the tax lien of the County supersedes the mortgage lien and the fund is insufficient to satisfy the claims of all three parties. I have paraphrased the foregoing statement from the language used by Judge McLaughlin in *Smith v. United States, et al.* (D.C. Hawaii), 113 F. Supp. 702, a case which is remarkably close to this case in its factual aspects. In his opinion (p. 710, et seq.) he considers all of the prior decisions beginning with *Ferris v. Chic-Mint Gum Co.*, 14 Del. Ch. 232, 124 A. 577, and *Brown v. General Laundry Service*, 139 Conn. 363, 94 A. 2d 10. In both of these cases the courts determined that by taking rank after a mortgagee by the provisions of 26 U.S.C. 3672 (now 6323) the United States also subordinated itself to those lienors who are superior to its immediate superior. The Brown

case was reversed by the Supreme Court in *United States v. City of New Britain*, 347 U.S. 81. The court held that any excess over the amount of the mortgage was subject to the federal lien. As to the question between the mortgagee and the state, the court said that the United States was not interested and that the answer depended on state law.

At this point the United States is eliminated. They are entitled to all of the fund after satisfaction of the lien of Jefferson. This leaves the one issue: Is the county entitled [16] to have its lien paid out of the funds set aside for the satisfaction of the lien of Jefferson? Returning to *Smith v. United States, et al.* (supra), we find that Judge McLaughlin refers to the dicta of Chief Justice Taft in the case of *Spokane County v. United States*, 279 U.S. 80, at p. 91:

“Moreover it is contended by the government that the relative priorities could have been maintained in that case (*Chic-Mint Gum Co.* case) by setting apart sufficient funds to pay the mortgage before paying the federal taxes and then providing for payment of the state tax out of the sum so set apart.”

and to the case of *Hopkins v. Eureka Coal Co.*, 33 Am. Fed. Tax Rep. 1627, in which the court adopted the solution suggested in the quotation above. Following the reasoning of Justice Taft's dicta, Judge McLaughlin concluded that the fund set aside for the satisfaction of the mortgage should be charged with payment of the territorial tax liens before being applied to the mortgage claim.

This appeals to me as being the most equitable result that could be accomplished. After the United States is satisfied in this case, I see no reason why the priorities of the remaining lienors should not follow the dictates of state law. As I have observed heretofore, the law of California gives the county preference over private debts (in this case a trust deed).

For the reasons I have stated, I conclude that the priorities in the impounded fund are to be ranked as follows:

First: Costs of Sale and Administration;

Second: The claim of Jefferson;

Third: The claim of the United States.

Out of the sum set aside for the payment of the Jefferson claim, the lien of the county shall first be satisfied and the [17] remainder paid over to Jefferson (which has already been done).

In this memorandum, I will not discuss at any length the question of interest on secured obligations. Before the decision of our Court of Appeals in *Beecher v. Leavenworth State Bank*, 192 F. 2d 10, the Bankruptcy Court allowed interest on secured claims to the extent that the security was sufficient to cover its payment; *United States v. Sampsell*, 153 F. 2d 731. In footnote 4 of its decision in the *Beecher* case, the Court of Appeals held that *U. S. v. Sampsell* had been overruled by the Supreme Court in *Vanston Bondholders Committee v. Green*, 329 U.S. 156, and in its main opinion held that post-bankruptcy interest was not allowable unless

it came under two qualifications to the rule, (1) that the estate was fully solvent, or (2) that the security yielded income which could be applied to the interest claim. This holding is further qualified by the statement that "The only times in which the majority of modern cases have allowed interest after bankruptcy on secured claims is when the courts have discovered equitable reasons for doing so * * *." In the instant case, the properties subject to the liens of the parties herein were promptly appraised and sold. The three parties in interest consented to liquidation by the trustee and any other course would have been to the detriment of the lienors. No lien creditor was delayed in its access to its security. It follows that no equitable reason, within the meaning of the Beecher case, has come into existence which would justify a departure from the general rule set out in that case. I have read the cases cited from other circuits, particularly *U. S. Trust Co. v. Zelle* (C.A. 8), 191 F. 2d 822, and *Macomb Trailer Coach, Inc. (Weeks v. McInnis)* (C.A. 6), 200 F. 2d 611, and I agree that those cases support the position of lienors herein regarding post-bankruptcy interest. In the *Matter of [18] Pollard Bros.*, 128 F. Supp. 818, Judge Peirson M. Hall of this court held that he was bound by the Beecher case, although he had previously ruled to the contrary in the *Matter of Ridgecrest Development Co.*, 129 F. Supp. 708. All of the recent decisions on this matter cite and consider the case of *Vanston Bondholders Committee v. Green*, *supra*. Our Court of Appeals has placed its own interpre-

tation on that case which is at variance with the holdings of other circuits. Only the Supreme Court can settle the differences that have arisen. At the present time, I feel that I am in the same position as Judge Hall was in the Pollard case, that I must accept and follow the rule set out in the Beecher case. Post-bankruptcy interest is disallowed on all claims under consideration herein.

In view of my rulings herein, the question of allocation of the proceeds of sale between the real and personal property has become moot. In event that it does become relevant, I direct that the proceeds be apportioned between real and personal property in the ratio that the official appraisals of those properties bear to each other.

Another question remains which has become moot in view of my rulings and that concerns the marshaling of liens. It is clear that Jefferson and the United States should be paid first out of the proceeds of personal property before they are paid out of the proceeds of real property against which the County lien is solely based.

Unless findings and conclusions are waived, they shall be prepared by counsel for the United States, served and presented to the court, together with an appropriate order to be entered. Local Rule 7a.

Dated this 6th day of January, 1956.

/s/ DAVID B. HEAD,

Referee in Bankruptcy.

[Endorsed]: Filed Jan. 6, 1956, Referee. [19]

United States District Court, Southern District
of California, Central Division

No. 64,381-WB

In the Matter of:

STOCKHOLDERS PUBLISHING COMPANY,
INC., a Corporation,

Bankrupt.

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER

In response to the petition of George T. Goggin, Trustee, to determine the priorities of liens, the Trustee, George T. Goggin, appeared by his counsel, Craig, Weller and Laugharn, and Robert Shutan; Jefferson Standard Life Insurance Company appeared by Meserve, Mumper & Hughes, by Leo Anderson, its attorneys; H. L. Byram, County Tax Collector, appeared by Andrew O. Porter, Deputy County Counsel, his attorney, and the United States of America appeared by Bruce I. Hochman, Assistant United States Attorney for the Southern District of California, and Eugene Harpole, Attorney, Internal Revenue Service. Evidence, oral and documentary, was received, and the Court, having considered said evidence and the statements of counsel, and having heretofore on the 15th day of August, 1955; the 29th day of August, 1955, and the 6th day of January, 1956, rendered memorandum opinions, now, therefore, from the evidence before the Court, makes the following [20]

Findings of Fact

I.

On or before the 1st day of December, 1945, Stockholders Publishing Company, Inc., a Nevada corporation, the bankrupt herein, made, executed and delivered a trust indenture, deed of trust, assignment, and chattel mortgage to Julian Price, trustee, to secure an indebtedness of \$1,000,000.00 to Jefferson Standard Life Insurance Company, which document was on said December 1, 1945, recorded as a deed, mortgage, power of attorney, trust deed, assignment, and chattel mortgage in Book 22587, page 13, Official Records of Los Angeles County, California.

II.

That said trust indenture, deed of trust, assignment and chattel mortgage covered property belonging to the bankrupt which said bankrupt transferred to the Times-Mirror Company on December 18, 1954, for a consideration of \$275,000.00, as well as that personal property sold on March 4, 1955, free and clear of liens in this bankruptcy proceeding for \$49,995.04, which sale was confirmed on March 4, 1955, and that real and personal property sold, on April 27, 1955, free and clear of liens, in this bankruptcy proceeding for \$382,500.00, which sale was confirmed on April 29, 1955, and all liens upon said property so sold were transferred to the proceeds of its sale without impairment. That Jefferson Standard Life Insurance Company has at all times co-operated with the trustee of said bank-

rupt estate and has taken no action to delay or hinder any sale of the assets of said bankrupt estate or the payment of the principal of and interest on its claim. [21]

III.

The indebtedness of Stockholders Publishing Company to Jefferson Standard Life Insurance Company secured by said trust indenture, deed of trust, assignment, and chattel mortgage was \$351,-223.74, inclusive of interest, plus attorneys' fees, on December 31, 1954, the date that the petition in bankruptcy was filed herein.

IV.

That on the 14th day of March, 1952, the Collector of Internal Revenue at Los Angeles, California, received the Commissioner of Internal Revenue's assessment list carrying assessments of 1943, 1944 and 1945 corporate income and excess profits taxes that had been made against Stockholders Publishing Company on March 11, 1952. The Collector of Internal Revenue issued notices and demands for the payment of said taxes on March 18, 1952. Notwithstanding said notices and demands for payment the sum of \$280,800.10, inclusive of interest accrued to December 31, 1954, of said 1943, 1944 and 1945 corporate income and excess profits taxes remains assessed, unpaid and outstanding. That on February 22, 1954, and May 13, 1954, withholding and Federal Insurance Contribution taxes for the fourth quarter 1953 and first quarter 1954 were assessed, and the same had been paid, with the exception

that a 5% penalty has been added thereto for failure to make payment within 10 days after notice and demand. The unpaid amounts of said penalties existing on December 31, 1954, and presently is the sum of \$7,808.48. Notices of lien securing payment of said taxes to the United States of America was filed in the office of the County Recorder of Los Angeles County, California, by the District Director of Internal Revenue (successor to the Collector of Internal Revenue) on December 20, 1954. [22]

V.

Los Angeles County, California, assessed real and personal property taxes for the year 1954-55 against the property of the bankrupt in the sum of \$15,384.10 which became a lien upon the four parcels of real estate described in the Trustee's Petition to Sell Real and Personal Property Free and Clear of Liens and to Determine Relative Priorities, on March 1, 1954. That said liens were transferred to the proceeds of the sale and remain unpaid.

VI.

From the proceeds of the property sold on April 27, 1956, Jefferson Standard Life Insurance Company was, on September 1, 1955, paid the sum of \$335,839.64, representing \$334,558.57, the principal of its claim, plus \$16,665.17 representing interest to December 31, 1954, less the tax claim of Los Angeles County in the amount of \$15,384.10, and its attorney, Leo Anderson, was paid \$3,500.00 as attorneys' fees allowed herein in addition to the

principal and interest on December 20, 1955. These payments constitute full payment of all indebtedness secured by the said Trust Indenture, Deed of Trust and Chattel Mortgage, with interest to the date of bankruptcy herein, except for the sum of \$15,384.10, which has been set aside to cover the claim of H. L. Byram, the Los Angeles County, California, Tax Collector, for 1954-1955 property taxes, and is presently in the custody of the Court. If additional funds are recovered by the trustee of this bankrupt from assets covered by and subject to the lien of Jefferson Standard Life Insurance Company, such additional amounts remaining after payment of the claim of the United States of America shall be applied to pay Jefferson Standard Life Insurance Company the said sum of [23] \$15,384.10.

VII.

The proceeds from the sale of real property and those from the proceeds of personal property on April 27, 1955, bear the same ratio to each other that the official appraisals of such properties bear to each other.

From the foregoing Findings of Fact, the Court draws the following

Conclusions of Law

I.

That the trust deed herein securing the indebtedness due to the Jefferson Standard Life Insurance Company, recorded December 1, 1945, in Book

22587, page 13, Official Records of Los Angeles County, contains an absolute obligation that the trustor (the bankrupt herein) must pay all taxes and assessments promptly when due (Book 22587 at pages 24-25, Official Records).

II.

Neither Jefferson Standard Life Insurance Company, the County of Los Angeles, the United States of America, nor any other creditor of Stockholders Publishing Company is entitled to payment of interest upon the amounts owing to them for any period subsequent to the 31st day of December, 1954, the date upon which the petition in bankruptcy was filed herein.

III.

That the order of priority in the funds derived from the sale herein of April 27, 1955, is as [24] follows:

1. The sum of \$351,223.74 due Jefferson Standard Life Insurance Company and the further sum of \$3500.00 as an attorneys' fee to its counsel, Leo Anderson;
2. The costs of sale and administration;
3. The lien claim of the United States for income and excess profits taxes in the sum of \$280,800.10, plus the sum of \$7,808.48 in non-payment penalties upon withholding and Federal insurance

contribution taxes for the fourth quarter 1953 and first quarter 1954.

4. Jefferson Standard Life Insurance Company has a valid lien to the extent of \$15,384.10, but the amount of said lien shall be deducted from the sum of \$351,223.74 as set forth in Conclusions of Law IV hereinbelow.

IV.

That from the sum of \$351,223.74 set aside for Jefferson Standard Life Insurance Company from the proceeds of the sale of April 27, 1955, the amount of \$15,384.10 should be paid over to H. L. Byram, the Tax Collector for the County of Los Angeles, State of California, in satisfaction of the 1954-1955 property tax levied upon the assets of the bankrupt and when this is done the bankrupt's liability to Jefferson Standard Life Insurance Company will have been fully satisfied unless additional amounts are recovered by the trustee as provided in Paragraph VI of the foregoing Findings of Fact.

Order

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is Ordered, Adjudged and Decreed: [25]

1. That the sum of \$335,839.64 was properly paid to Jefferson Standard Life Insurance Company under its trust indenture, deed of trust and chattel mortgage;

2. That from funds that otherwise would have been payable to said Jefferson Standard Life Insurance Company the sum of \$15,384.10 shall be paid to H. L. Byram, County Tax Collector of Los Angeles County, California, in satisfaction of the 1954-1955 property tax assessed upon the assets of the bankrupt herein, but said sum of \$15,384.10 shall be paid to said Insurance Company if said trustee recovers funds from assets subject to the lien of said Insurance Company in addition to those required to pay the claim of the United States of America;

3. That the sum of \$3500.00 paid to Leo Anderson on December 20, 1955, is the full compensation due the attorney for Jefferson Standard Life Insurance Company for services to July 7, 1955.

4. That none of the creditors of Stockholders Publishing Company are entitled to interest upon their claims after the filing of the petition in bankruptcy herein on December 31, 1954; and

5. That after the payment of the costs of sale and administration appertaining to the assets sold herein on the 27th day of April, 1955, the balance of the proceeds from said sale be paid to the United States of America for application upon the assessed and [26] unpaid corporation income and excess profits taxes of Stockholders Publishing Company for the taxable years 1943, 1944 and 1945, and non-payment of 5% penalties upon the fourth quarter 1953 and first quarter 1954 withholding and Federal insurance contribution taxes.

Dated: This 20th day of February, 1956.

/s/ DAVID B. HEAD,
Referee in Bankruptcy.

Approved as to Form:

CRAIG, WELLER &
LAUGHRAN, and
ROBERT SHUTAN,

By /s/ HUBERT F. LAUGHRAN,
Attorneys for Trustee.

MESERVE, MUMPER &
HUGHES,

By /s/ LEO ANDERSON,
Attorneys for Jefferson Standard Life Insurance
Company.

HAROLD W. KENNEDY,
County Counsel,

By /s/ ANDREW O. PORTER,
Deputy County Counsel, Attorney for H. L. Byram,
County Tax Collector, Los Angeles County.

LAUGHLIN E. WATERS,
United States Attorney;

EDWARD R. McHALE,
Assistant U. S. Attorney,
Chief, Tax Division;

BRUCE I. HOCHMAN,
Assistant U. S. Attorney;

EUGENE HARPOLE,
Attorney, Internal Revenue
Service,

By /s/ EUGENE HARPOLE,
Attorneys for United States
of America.

Receipt of copy acknowledged.

[Endorsed]: Filed Feb. 20, 1956. Referee. [27]

[Title of District Court and Cause.]

PETITION FOR REVIEW

To Honorable David B. Head, Referee in Bankruptcy:

Comes Now, Jefferson Standard Life Insurance Company, a corporation, and presents its petition for review herein by Honorable William M. Byrne, Judge of the above-entitled court, as follows:

1. The orders of which petitioner complains are those Findings of Fact, Conclusions of Law and Order made and entered herein on or about February 20, 1956, a true copy of the same being attached hereto as Exhibit "A" and by this reference incorporated herein.

2. Being a mortgage lien claimant herein in the principal amount of \$334,558.57, plus interest to December 31, 1954, in the amount of \$16,665.17, plus interest at the rate of \$43.859 per day from

said date to September 1, 1955, in the sum of \$10,657.74, petitioner is especially aggrieved by the said orders, as hereinafter alleged. [29]

3. Petitioner alleges said orders to be erroneous in the following respects:

(1) Said orders erroneously and inequitably deny petitioner's claim for interest after December 31, 1954, the date of filing of the petition in bankruptcy.

(2) Said orders erroneously and inequitably subordinate payment of petitioner's claim, to the extent of \$15,384.10, to payment of claim of the County of Los Angeles for real and personal property taxes and the claim of the United States for income and excess profits taxes and penalties on withholding and federal insurance contribution taxes.

(3) Said orders erroneously and inequitably deny to petitioner's lien priority over the liens of the County of Los Angeles and the United States.

(4) Said orders erroneously and inequitably give the lien of the United States priority over the lien of petitioner to the extent of \$15,384.10.

(5) Said orders erroneously and inequitably give the lien of the County of Los Angeles priority over the lien of petitioner.

(6) The Referee committed error in applying State law to determine the priority of the liens of petitioner and the County of Los Angeles.

(7) The Referee committed error in determining that the law of California gives the lien of the County of Los Angeles for real and personal property taxes an absolute priority over the lien of petitioner's mortgage and deed of trust.

(8) Said orders erroneously give the lien of the County of Los Angeles for real and personal property taxes priority over the lien of the United States for income and excess profits taxes. [30]

(9) Paragraph VI of the said Findings of Fact is erroneous as and to the extent hereinabove alleged.

(10) Paragraphs II, III and IV of the said Conclusions of Law are erroneous as and to the extent hereinabove alleged.

(11) Paragraphs 2, 4 and 5 of the said Order are erroneous as and to the extent hereinabove alleged.

(12) The evidence does not support the said Findings of Fact insofar as the same are erroneous as hereinabove alleged.

(13) The evidence and Findings of Fact do not support the Conclusions of Law.

Wherefore, petitioner prays for review of said orders by the District Judge, that said orders be vacated and set aside insofar as they deny petitioner's claim for interest after December 31, 1954, and subordinate its claim to the extent of \$15,384.10 to the claims of the United States and the County

of Los Angeles, and that the matter be recommitted to the Referee with directions to order payment to petitioner forthwith of said sum of \$15,384.10 and interest on its claim from December 31, 1954, to the date of payment in the amount of \$10,657.74.

Dated: March 15, 1956.

JEFFERSON STANDARD LIFE INSURANCE
COMPANY, a Corporation,

By MESERVE, MUMPER &
HUGHES and

LEO E. ANDERSON,
Its Attorneys,

By /s/ LEO E. ANDERSON.

Duly Verified.

Affidavit of Mail attached.

[Endorsed]: Filed March 15, 1956. [31]

[Title of District Court and Cause.]

REFeree'S CERTIFICATE ON REVIEW

To the Honorable William M. Byrne, Judge of
the United States District Court, Southern
District of California, Central Division:

I, David B. Head, Referee in Bankruptcy in this
court, do certify as follows:

In the above-entitled matter it was ordered that
the trustee sell certain assets of the bankrupt and

that purported liens be transferred to the proceeds of sale. Upon a petition filed by the trustee, proceedings were had to determine the respective rights of the Jefferson Standard Life Insurance Company, the United States of America (Director of Internal Revenue) and the Tax Collector for Los Angeles County.

This matter was heard and on January 6, 1956, I filed a memorandum in which I discussed and determined the issues. Findings of Fact, Conclusions of Law and an Order were thereafter entered. From this order the Jefferson Standard Life Insurance Company, and the Tax Collector for Los Angeles County [42] have petitioned for review.

My memorandum states the questions involved in the review.

I further certify the following documents from my file:

1. Order authorizing Trustee to Sell Real and Personal Property Free and Clear of Liens;

2. Petition re Liens and Notice Thereon;

3. Memorandum by Referee and Order—Trustee vs. Various Lienholders;

4. Supplemental Order;

5. Memorandum by Referee;

6. Findings of Fact, Conclusions of law and Order;

7. Petition for Review—Jefferson Standard Life Insurance Company;

8. Petition for Review—H. L. Byram, County Tax Collector;

9. Reporter's Transcript of Testimony and Exhibits:

United States' No. 1 to 5, inclusive, (Except No. 3 which Trustee will furnish, if needed);

County of Los Angeles' No. 1; Jefferson Standard Life Insurance Company's No. 1.

Dated: April 19, 1956.

Respectfully submitted,

/s/ DAVID B. HEAD,

Referee in Bankruptcy.

[Endorsed]: Filed April 19, 1956, Referee. [43]

July 20, 1956.

Robert H. Shutan and
Craig, Weller & Laugharn,
817, 111 West 7th St.,
Los Angeles 14, Calif.

Eugene Harpole,
Bruce I. Hochman,
Asst. U. S. Attorneys,
808 Federal Bldg.,
Los Angeles 12, Calif.

Harold W. Kennedy,
Co. Counsel;
A. O. Porter,
Dep. Co. Counsel;
1100 Hall of Records,
Los Angeles, Calif.

Meserve, Mumper & Hughes,
Leo E. Anderson,
612 S. Flower St.,
Los Angeles 17, Calif.

Re: Stockholders Publishing Co., Inc.,
64,381-WB, Bkey,

Please be advised that the Court this date entered the following order in the above matter:

“Referee’s Order Is Affirmed.”

Counsel for Trustee in Bankruptcy is ordered to prepare, serve and lodge formal order pursuant to Local Rule 7.

JOHN A. CHILDRESS,
Clerk. [44]

[Title of District Court and Cause.]

MINUTES OF THE COURT
JULY 20, 1956

Present: Hon. Wm. M. Byrne, District Judge;

Proceedings:

Entered order affirming order of Referee re petition of Jefferson Standard Life Ins. Co. Mailed notice to counsel.

JOHN A. CHILDRESS,
Clerk. [45]

In the District Court of the United States for the
Southern District of California, Central Division

No. 64381-WB

In the Matter of

STOCKHOLDERS PUBLISHING COMPANY,
INC., a Corporation,

Bankrupt.

ORDER AFFIRMING ORDER OF
DAVID B. HEAD

February 20, 1956

Petition for Review of certain order made in the above-entitled proceedings by Referee David B. Head, dated February 20, 1956, having been duly filed herein by the Jefferson Standard Life Insurance Company and by H. L. Byram, County Tax Collector of the County of Los Angeles, and the said Petitions for Review coming on for hearing and determination on June 4, 1956, at the hour of 2 p.m., and the Petitioner, Jefferson Standard Life Insurance Company, appearing by Meserve, Mumper and Hughes, its Attorneys, by Leo E. Anderson, and the Petitioner H. L. Byram, County Tax Collector, appearing by his attorney, Harold W. Kennedy, County Counsel, by Andrew O. Porter, Deputy County Counsel, and George T. Goggin, the Trustee, appearing by Craig, Weller and Laugharn, by Hubert F. Laugharn, his attorney, and the United States of America, (Direc-

tor of Internal Revenue) appearing by its attorney, Laughlin E. Waters, United States Attorney; Edward R. McHale, Assistant U. S. Attorney, Chief, Tax Division, by Bruce I. Hochman, Assistant United States Attorney, and [46]

Points and Authorities having been filed by respective Parties, and orally argued by the respective Attorneys,

Now Therefore, It Is Ordered that the Order of Referee David B. Head, dated February 20, 1956, be, and the same hereby is affirmed and the findings of fact and conclusions of law as made by the Referee in support thereof are hereby adopted by the Court.

Dated: August 13, 1956.

/s/ WM. M. BYRNE,
U. S. District Judge.

Approved as to Form:

GEORGE T. GOGGIN,
Trustee;

By CRAIG, WELLER &
LAUGHARN,

By /s/ HUBERT F. LAUGHARN,
Attorney for Trustee.

H. L. BYRAM,
County Tax Collector,
Los Angeles, Calif.

By HAROLD W. KENNEDY,
County Counsel.

By /s/ ANDREW O. PORTER,
Deputy County Counsel.

JEFFERSON STANDARD
LIFE INS. CO.,

By MESERVE, MUMPER &
HUGHES,

By /s/ LEO E. ANDERSON,
Its Attorney.

UNITED STATES OF
AMERICA,
(Director of Internal
Revenue) ;

By LAUGHLIN E. WATERS,
United States Attorney;

By /s/ EDWARD R. McHALE,
Asst. U. S. Attorney,
Chief, Tax Division.

[Endorsed]: Filed August 13, 1956, U.S.D.C.

Docketed and entered August 14, 1956. [47]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Jefferson Standard
Life Insurance Company, a corporation, claimant,

hereby appeals to the United States Court of Appeals for the 9th Circuit from that certain Order entered in the above-entitled matter on or about August 14, 1956, on appellant's petition for review, affirming Findings of Fact, Conclusions of Law, and Order of Referee David B. Head made and entered on or about February 20, 1956, and from the whole thereof.

This notice is given pursuant to Rule 73, FRCP.

MESERVE, MUMPER &
HUGHES,

By /s/ LEO E. ANDERSON,
Attorneys for Jefferson Standard Life Insurance
Company, a Corporation, Appellant.

[Endorsed]: Filed September 6, 1956, [48]
U.S.D.C.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

To Appellees, United States of America and Laughlin E. Waters, United States Attorney; H. L. Byram, County Tax Collector of Los Angeles County, and Harold W. Kennedy, County Counsel; and George T. Goggin, Trustee, and Craig, Weller & Laugharn, His Attorneys:

Pursuant to Rule 75 (d) FRCP, appellant Jefferson Standard Live Insurance Company, a cor-

poration, hereby states that the following are the points on which it intends to rely in its appeal:

1. The Referee's orders erroneously and inequitably denied appellant's claim for interest after the date of filing of the petition in bankruptcy.

2. Said orders erroneously and inequitably subordinated payment of appellant's claim to the extent of \$15,384.10, to payment of the claim of the County of Los Angeles for real and personal property taxes and the claim of the [49] United States for income and excess profit taxes and penalties on withholding and federal insurance contribution taxes.

3. Said orders erroneously and inequitably denied to appellant's lien priority over the liens of the County of Los Angeles and the United States.

4. Said orders erroneously and inequitably gave the lien of the United States priority over the lien of appellant to the extent of \$15,384.10.

5. Said orders erroneously and inequitably gave the lien of the County of Los Angeles priority over the lien of appellant.

6. The Referee committed error in applying state law to determine the priority of the liens of appellant and the County of Los Angeles.

7. The Referee committed error in determining that the law of California gave the lien of the County of Los Angeles for real and personal prop-

erty taxes priority over the lien of appellant's mortgage and deed of trust.

8. Said orders erroneously gave the lien of the County of Los Angeles for real and personal property taxes priority over the lien of the United States for income and excess profits taxes and penalties on withholding and federal insurance contribution taxes.

MESERVE, MUMPER &
HUGHES,

By /s/ LEO E. ANDERSON,
Attorneys for Jefferson Standard Life Insurance
Company, a Corporation, Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 6, 1956, [50]
U.S.D.C.

[Title of District Court and Cause.]

DOCKET ENTRIES

1956

Apr. 27—Fld Reply of Jefferson Standard Life Insurance Company to points and authorities of the Los Angeles County Tax Collector in support of Petition for Review.

Apr. 27—Fld Points and Authorities of Respondent, H. L. Byram County Tax Collector, on Petition for Review by Jefferson Standard Life Insurance Company.

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- May 1—Fld Reply Brief upon behalf of George T. Goggin, Trustee.
- May 1—Fld Affidavit of Service by Mail.
- Apr. 30—Fld Stip. and ord. thereon that Govt. hv. 10 das. to file its reply to pts. and auths. of Jefferson Srd. Life Ins. Co. on petn. for review.
- May 1—Fld Affidavit of Service by Mail. ten das. to file its reply to pts. & auths. of H. L. Byram, Co. Tax. Coll. of Co. of L. A. on petn. for review.
- May 10—Fld Government's Brief in support of Referee's order.
- May 11—Ent ord. for and placed on cal, on 6-4-56, 9:45 AM for hrg. on petn. of Jefferson Std. Life Ins. Co. for review of Ref's ord. of 2-20-56. Notif. counsel.
- June 4—Ent. proc. hrg. petn. Jefferson Std. Life Ins. Co. and Co. Tax Coll. of L. A. Co., for review of Ref's ord. of 2-20-56 & ent. ord. matter std. submitted.
- Aug. 13—Fld ord on petn for review affirm ord of Ref Head dtd 2-20-56 & adopt finds & Concls of Referee. (Ent 8-14-56). Not attys.
- July 20—Ent ord affirming ord of Ref re petn of Jefferson Std Life Ins. Co. ntfd counsel.
- Sept. 6—Fld Notice of appeal.
- Sept. 6—Fld Stipulation for costs on appeal.
- Sept. 6—Fld Statement of points on appeal.

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Sept. 6—Fld Designation of Record on appeal.

Sept. 19—Fld Additional Designation of Record on appeal by Appellee United States of America. [51]

In the District Court of the United States, Southern
District of California, Central Division

In Bankruptcy No. 64381-WB

In the matter of:

STOCKHOLDERS PUBLISHING CO., INC.,
Bankrupt.Before: Honorable David B. Head, Referee in
Bankruptcy.HEARING RE: ORDER TO SHOW CAUSE;
TRUSTEE VS. COUNTY TAX COLLECTOR,
DIRECTOR OF INTERNAL REVENUE,
ET AL.

The following is a stenographic transcript of the proceedings had in the above matter, which came on for hearing before the Honorable David B. Head, United States Referee in Bankruptcy, at his courtroom, 340 Federal Building, Los Angeles, California, at the hour of 10:00 o'clock a.m., on Wednesday, June 8, 1955.

* * *

The Referee: All right, we will proceed. Do any of the parties have evidence to offer?

Mr. Porter: Yes, your Honor.

Mr. Harpole: I have a certified copy of the recorded notice of tax lien, your Honor. I desire to offer it in evidence as the Exhibit No. 1 of the United States.

The Referee: All right. We will mark this as Exhibit 1.

Mr. Laugharn: Without reading that, Mr. Harpole, is that the instrument recorded on December 20th?

Mr. Harpole: December 20, 1954.

As Exhibit No. 2, I wish to offer by reference the chattel mortgage, the trust indenture and the [32*] trust deed of Jefferson Standard Life Insurance Company from the files.

As Exhibit 3, I desire to offer the minutes of the Stockholders Publishing Company of December 18, 1954, from the files.

The Referee: Let me identify that.

Mr. Harpole: They are the minutes of December 18, 1954.

The Referee: That is Trustee's Exhibit No. 2 of February 23rd.

That will be your Exhibit 3 in this matter.

Mr. Harpole: Yes; thank you.

I also desire to offer in evidence at this time by reference, paragraph 5 of the Trustee's petition to sell real and personal property free and clear of liens and to determine relative priorities. The date of the petition was March 22, 1955, signed by George T. Goggin, Trustee.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

The Referee: May I have that again? That is paragraph 5 of the petition to sell?

Mr. Harpole: Yes, paragraph 5. The date of the petition is March 22, 1955.

Now, may it be stipulated that an assessment list for the 1943, 1944 and 1945 Federal income taxes of Stockholders Publishing Company were received in the office of the Collector of Internal Revenue at Los Angeles [33] on the 14th day of March, 1952?

Mr. Laugharn: It is so stipulated. That is in the title report. I have checked that date a number of times.

Mr. Harpole: Do you other gentlemen go along with that stipulation? It is shown on the recorded notice. I could call a witness to testify on it in a few minutes.

Mr. Porter: Yes. I will so stipulate.

Mr. Harpole: Mr. Anderson, would you stipulate that the assessment list was received in the Office of the Collector of Internal Revenue on March 14, 1952?

Mr. Anderson: Yes.

Mr. Harpole: May it be stipulated that the notice and demand for payment of tax has been made on Stockholders Publishing Company?

Mr. Laugharn: I don't know about that. Is that a necessary element, Mr. Harpole?

Mr. Harpole: It is with a tax lien. I had perhaps better call a witness, if we may have three minutes.

The Referee: What would your witness testify to?

Mr. Harpole: That the notice of demand and payment of tax was sent to the Stockholders Publishing Company and that the tax has not been paid.

Mr. Laugharn: We will stipulate that he would so testify.

The Referee: Do you know that to be a fact, [34]
Mr. Harpole?

Mr. Harpole: I am so advised. I can get the exact date from the witness.

The Referee: It was prior to the filing?

Mr. Harpole: Prior to the filing.

The Referee: Does anyone want proof on that?

Mr. Anderson: No.

The Referee: Then, you are all stipulating?

Mr. Laugharn: On behalf of the Trustee, we will stipulate.

Mr. Porter: I will so stipulate.

Mr. Anderson: I will stipulate.

Mr. Harpole: That is all.

Mr. Porter: I would like to offer into evidence five tax bills of the County of Los Angeles addressed to Stockholders Publishing Company, Inc.

I would like to have counsel stipulate that they are true copies of the County tax roll except that these do not show any penalties as yet.

Mr. Harpole: We will so stipulate.

Mr. Laugharn: We will so stipulate.

Mr. Porter: These bills are, first, \$952.17; \$1,261.76; \$9,699.90; \$334.98 and \$3,235.29, plus penalties and interest that have accrued.

Mr. Shutan: Do you have a total on it?

Mr. Porter: No; I don't have a total. [35]

Mr. Laugharn: Plus penalties, did you say?

Mr. Porter: Yes.

The Referee: That will be marked the County's Exhibit No. 1.

Mr. Laugharn: Well, I don't suppose we have to take the Knox-Powell-Stockton case of the lien and the penalty and the interest attaching, do we?

That point is raised on behalf of the Trustee in the Trustee's petition on page 3. We asked that the Court take the computation if it becomes necessary to allocate the consideration of \$382,500 as to real property and personal property and the amount is set forth as \$206,664.25 to real property and \$175,-835.75 to personal property.

Those are the percentages based upon the actual offers on the first day of the sale, and then the blanket percentage to the blanket increase, as I understand it, on the second day.

I asked the Trustee's office to assemble that information.

The Referee: That is based upon the separate bids that were made and the raise that came the following day, I gather.

Mr. Laugharn: Yes.

Mr. Harpole: Another matter that I would like to have in the record is this: It isn't available, but I [36] think the Trustee is familiar with it. That is the contract for sale to the Times-Mirror Company by the Stockholders Publishing Company.

Mr. Laugharn: And possibly the resolution on that. Is that already in evidence?

Mr. Harpole: I offered the resolution.

Mr. Laugharn: I will produce that document then and it will be received here as an exhibit. It has been in court a number of times, and we just don't happen to have it here in this particular file.

The Referee: We will mark that as your Exhibit 5. Then, that will be furnished?

Mr. Laugharn: I will deliver it to the Court.

The Referee: Yes.

Mr. Anderson: Your Honor, I would ask that the parties here stipulate that the price received from the sale of assets is in excess of the claim of Jefferson Standard Life Insurance Company.

Mr. Harpole: It will be so stipulated.

The Referee: I can take notice of that.

Mr. Laugharn: Yes.

Mr. Anderson: Also, I would ask that the parties stipulate that Jefferson Standard Life Insurance Company has not taken any action which would delay or interfere with the orderly processes of this bankruptcy proceeding and the payment of its [37] claim.

Mr. Laugharn: Well, as far as the Trustee is concerned, we certainly don't make any contention that there has not been co-operation.

Mr. Anderson, was that going to some particular point?

Mr. Anderson: No. That was just the general point that we have co-operated and that we have not attempted in any way to delay the realization of funds with which to pay our claim or do anything which would delay the payment.

Mr. Harpole: We are not in a position to know, Mr. Anderson. We know nothing one way or the other. Our files are very skinny. Yours already are three times as big as ours, and the Trustee talks about his files being labeled by the filing cabinets.

We don't have any knowledge, so I don't think we can stipulate to that.

Mr. Anderson: If there can be no stipulation, I perhaps should testify to the fact that we have not——

The Referee: You are trying to prove a negative. You do not have to do that, do you?

Mr. Anderson: Except that I think in this matter there should be a finding as to whether or not we have done anything which, in equity, should prevent us from computing interest to the date of payment if this matter goes over to another year. We are fighting it out with [38] the Times. It is nothing that is our fault.

The Referee: We will consider your statement as having been made as an officer of the Court and we can give it full weight, unless someone wishes to say otherwise.

Mr. Anderson: If anyone wants to have me sworn before I make the statement, I will be sworn and repeat the statement.

The Referee: I don't think that is necessary.

Mr. Porter: May I state to the Court that my failing to argue any points is not a waiver of those points.

The Referee: No; there are no waivers here.

Mr. Anderson: I don't know that I will need to offer in evidence our claim.

The Referee: I think that——

Mr. Anderson: It probably should be done.

The Referee: I think that Mr. Harpole has offered about everything you would offer. That is your trust indenture, the trust deed and the chattel mortgage, and so we will consider it in evidence for all purposes.

Mr. Anderson: The claim will be included in that exhibit?

The Referee: Yes.

Mr. Harpole: I will join with the stipulation that the claim may be put in as an exhibit, too. [39]

The Referee: We will consider the whole claim.

* * *

Mr. Anderson: I have one more matter, your Honor.

I have here a declaration of default which was furnished to the Stockholders Publishing Company by the Title Insurance and Trust Company, as trustee, and dated [40] December 23, 1954.

May it be stipulated that the declaration of default was furnished to the Stockholders Publishing Company by the Title Insurance and Trust Company, as trustee?

Mr. Harpole: Can we put the declaration of default in evidence?

Mr. Anderson: Yes.

Mr. Harpole: We will stipulate to that.

Mr. Anderson: That was furnished to Stock-

holders Publishing Company prior to January 1, 1955.

Mr. Harpole: As to the date, I will leave that to the trustee.

The Referee: It will be Jefferson Standard Insurance Company's Exhibit 1.

Mr. Anderson: I would need time to bring Mr. Dunlap here to testify as to the date when that was given to Stockholders Publishing Company.

Mr. Laugharn: Do you know the date yourself, Mr. Anderson?

Mr. Anderson: Not offhand. I may have it in my file.

Mr. Laugharn: Do you have a letter of transmittal? If we could shorten that in any manner with Mr. Anderson's statement, we will take it, and on behalf of the Trustee we will stipulate to it. [41]

The Referee: There is nothing on this declaration of default which indicates when it was mailed.

Mr. Anderson: That is just an executed copy.

The Referee: Did you get a bill from the title company?

Mr. Anderson: I beg your pardon?

The Referee: If you got a bill from the title company, maybe that will show the date.

Mr. Anderson: Yes; I have a letter here from the Title Insurance and Trust Company, dated December 23, 1954, advising me that the declaration of default was forwarded to the Stockholders Publishing Company on that date, which is December 23, 1954.

Mr. Laugharn: December 23rd?

Mr. Anderson: Yes; December 23, 1954. If counsel will stipulate that that declaration was forwarded to Stockholders Publishing Company on that date, that will avoid the necessity of bringing anyone here to testify.

Mr. Harpole: May I see that declaration of default, please, Mr. Anderson?

Mr. Laugharn: We will so stipulate on behalf of the Trustee.

Mr. Porter: We will so stipulate for the County.

Mr. Harpole: Do you have the request that went to the title company or a copy of it to go along with this?

The Referee: I think we can assume that the title [42] company did not volunteer that, can't we?

Mr. Anderson: Yes; I have an executed copy here. I have here an executed copy of the request to the title company, as trustee, that they issue a declaration of default.

May I ask that that be made a part of Exhibit No. 1 for Jefferson Standard.

The Referee: Yes. [43]

* * *

UNITED STATES EXHIBIT No. 1

Form 668

U. S. Treasury Department

Internal Revenue Service

No. 19661

160559

Notice of Federal Tax Lien Under
Internal Revenue LawsUnited States Internal Revenue,
Los Angeles District—06

Pursuant to the provisions of Sections 3670, 3671, and 3672 of the Internal Revenue Code of the United States, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount (or amounts) of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is (or are) a lien (or liens) in favor of the United States upon all property and rights to property belonging to said taxpayer, to wit:

Name of taxpayer: Stockholders Publishing Co. Inc.

Residence or place of business: 1257 So. Los Angeles St., Los Angeles, California.

Nature of Tax	Year or Taxable Period	Date Assessment List Received	Amount Assessment
Corp. Income			
3-11 Spl 7 00C-52L.....	1943	3/14/52	\$ 36,024.95
Corp. Income			
3-11 Spl 7 06C-52L.....	1944	3/14/52	51,944.00
Corp. Income			
3-11 Spl 7 08C-52L.....	1944	3/14/52	53,676.40
Corp. Income			
3-11 Spl 7 10C-52L.....	1945	3/14/52	93,920.75
Total		<u>\$235,566.10</u>

Witness my hand at Los Angeles, California, on
this, the 20th day of December, 1954.

R. A. RIDDELL,
District Director of
Internal Revenue;

By /s/ DAVID F. BOESHAAR,
Collection Officer.

(Note: Certificate of officer authorized by law to
take acknowledgements is not essential to the
validity of Notice of Federal Tax Lien(s).
G. C. M. 26419, 1950-1 C. B., 125.)

County Recorder
County of Los Angeles
Los Angeles, California

Notice of Tax Lien Filed at Request of Dir. of
Int. Rev. Dec. 20, 1954.

MAME B. BEATTY,
County Recorder.

State of California,
County of Los Angeles—ss.

I hereby certify the foregoing to be a full, true and correct copy of the original instrument filed for record December 20th, 1954. Document No. 2334.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, this 8th day of June, 1955.

MAME B. BEATTY,
County Recorder;

By /s/ THOMAS M. CROWLEY,
Deputy.

Admitted in evidence June 8, 1955.

JEFFERSON STANDARD'S EXHIBIT No. 1

Jefferson Standard Life Insurance Company
Greensboro, N. C.

December 21, 1954.

Air Mail

Mr. C. R. S. Dunlop
Title Insurance and Trust Company
433 South Spring Street
Los Angeles 13, California

Stockholders Publishing Company, Inc.
First Mortgage 4½% Bonds

Dear Mr. Dunlop:

Bonds and interest installments as follows are past due and unpaid:

Due Date	Bond No.	Principal Amount	Interest Due
3-1-54	33	\$12,500.00	\$3,763.78
6-1-54	34	12,500.00	3,763.78
9-1-54	35	12,500.00	3,763.78
12-1-54	36	12,500.00	3,763.78

Because of this delinquency, we request that you, as substituted Trustee under the Trust Indenture and Chattel Mortgage dated as of December 1, 1925, executed by Stockholders Publishing Company, Inc., issue a declaration of default.

We certify that we own and hold all of the unpaid bonds of the issue consisting of Bonds numbered 33 through 58, each in the amount of \$12,500, and Bond No. 59 on which the principal balance unpaid is \$9,558.57; all the bonds aggregate \$334,558.57 par value.

Sincerely yours,

M. H. CROCKER,
Assistant Treasurer.

MHC:en

cc—Mr. Leo E. Anderson

DECLARATION OF DEFAULT

To: Stockholders Publishing Company, Inc., a corporation:

Whereas, heretofore and as of the first day of December, 1945, Stockholders Publishing Company, Inc., a corporation organized and existing under and by virtue of the laws of the State of Nevada, with one of its principal offices and places of business in the City of Los Angeles, County of Los Angeles, State of California (herein called "the Company"), and Julian Price, a resident of the City of Greensboro in the State of North Carolina, therein called "the Trustee," made and entered into a certain

Trust Indenture and Mortgage of Chattels given to secure the payment of an authorized issue of One Million Dollars (\$1,000,000.00) of bonds, all as specifically set forth in said Trust Indenture and Mortgage of Chattels, and

Whereas, said Trust Indenture and Mortgage of Chattels was recorded in the office of the County Recorder of Los Angeles County on December 1, 1945, in Book 22587, page 13 of Official Records of Los Angeles County, California, and

Whereas, thereafter and on December 23, 1946, "the Company" and Jefferson Standard Life Insurance Company, a corporation, appointed Title Insurance and Trust Company, a California corporation, as Successor Trustee, all as provided in said Trust Indenture and Mortgage of Chattels, which said appointment was thereafter and on December 30, 1946, recorded in the office of the County Recorder of Los Angeles County, California, in Book 24103, page 118 of Official Records, and since that time Title Insurance and Trust Company, a corporation, has been and still is the Trustee qualified and acting as Successor Trustee under said Trust Indenture and Mortgage of Chattels, and

Whereas, it is provided in said Trust Indenture and Mortgage of Chattels that if a default shall occur in the payment of the outstanding bonds when due, that then the Trustee may upon written request so to do by the holders of one-half or more in amount of the bonds then outstanding, shall de-

clare the principal of each and all of said bonds immediately due and payable regardless of the dates of maturity thereof and thereupon each and all of the said bonds shall be and become due immediately, and that "the Company" shall be notified of such defaults by the Trustee by written notice to that effect duly signed by the Trustee and thereupon either duly served upon "the Company" or duly mailed to it with postage prepaid thereon, and

Whereas, Jefferson Standard Life Insurance Company, a corporation, being the owner of all of the outstanding bonds, has in writing requested the Trustee to so declare the principal of each and all of the said bonds immediately due and payable because of the fact that default has occurred in that payment has not been received of the following described four outstanding bonds:

Due Date	Bond No.	Principal Amount	Interest Due
3-1-54	33	\$12,500.00	\$3,763.78
6-1-54	34	12,500.00	3,763.78
9-1-54	35	12,500.00	3,763.78
12-1-54	36	12,500.00	3,763.78

Now Therefore, Title Insurance and Trust Company, as Successor Trustee, by reason of the aforesaid, does hereby declare the principal of each and all of the said bonds immediately due and payable, being bonds numbered 33 to 58, each in the amount of \$12,500.00 and Bond No. 59 in the amount of its unpaid principal balance in the sum of \$9,558.57, making a total aggregate par value of \$334,558.57,

and the Trustee does herewith give this written notice to that effect to "the Company."

In Witness Whereof, Title Insurance and Trust Company, as Successor Trustee, has caused this instrument to be executed by its duly authorized officers under its corporate seal, this 23rd day of December, 1954.

[Seal]

TITLE INSURANCE AND
TRUST COMPANY,

A Corporation, as Successor
Trustee;

By /s/ E. H. BOOTH, JR.,
Vice President;

By /s/ A. A. MARTIN,
Assistant Secretary.

State of California,
County of Los Angeles—ss.

On this 23rd day of December, 1954, before the undersigned, a Notary Public in and for said County and State, personally appeared E. H. Booth, Jr., known to me to be the Vice President, and A. A. Martin, known to me to be the Assistant Secretary of Title Insurance and Trust Company, the Corporation that executed the within instrument, as Successor Trustee, known to me to be the persons who executed the within Instrument, on behalf of the Corporation herein named, and acknowledged to

me that such corporation executed the same as Successor Trustee.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ EDNA DEWHURST,
Notary Public in and for Said
County and State.

My Commission Expires March 4, 1957.

Admitted in evidence June 8, 1955.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify, that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 57, inclusive, containing the original:

Order Authorizing Trustee to Sell Real and
Personal Property Free and Clear of Liens;
Petition and Notice Thereon of George T.
Goggin;
Memorandum by Referee and Order;
Supplemental Order;
Memorandum by Referee;

Findings of Fact, Conclusions of Law and Order;

Petition for Review;

Referee's Certificate on Review;

Order Affirming Order of David B. Head;

Notice of Appeal;

Statement of Points on Appeal;

Designation of Record on Appeal;

Additional Designation of Record on Appeal by U.S.A.;

and a full, true and correct copy of the Notification of Entry of Referee's Order; Minutes of the Court had on July 20, 1956; and a photostatic copy of the last docket sheet (docket entries);

B. 1 volume of reporter's transcript of proceedings had on June 8, 1955;

C. United States' exhibits 1-5, inclusive, Jefferson Standard's No. 1; and County Tax Collector's No. 1.

I further Certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Witness my hand and the seal of said District Court, this 15th day of October, 1956.

[Seal]

JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15349. United States Court of Appeals for the Ninth Circuit. Jefferson Standard Life Insurance Company, a corporation, Appellant, vs. United States of America, H. L. Byram, County Tax Collector of Los Angeles County, and George T. Goggin, Trustee of Stockholders Publishing Company, Inc., a corporation, bankrupt, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed November 6, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

